EXCERPTS FROM
[Pages i-iii and 49-50]

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GOV'T CODE § 6103

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
CLERK, U.S. DISTRICT COURT
APR - 5 2004
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

CEMEX, INC., a Louisiana Corporation,
Plaintiff,
v.
COUNTY OF LOS ANGELES, and
DOES 1 THROUGH 10, INCLUSIVE
Defendants.

UNITED STATES OF AMERICA,
Plaintiff-in-Intervention.

City of Santa Clarita,
Defendant-in-Intervention.

Case No. 0200747 DT (FMOx)
Judge Dickran Tevrizian
Courtroom 880

CITY OF SANTA CLARITA'S OPPOSITION TO MEMORANDA IN SUPPORT OF MOTION TO ENTER CONSENT DECREE

[DECLARATIONS OMITTED]

Date:	May 3, 2004
Time:	10:00 a.m.
Courtroom:	880
Complaint Filed:	01/25/02
First Amended Complaint Filed:	04/11/02
Second Amended Complaint Filed:	05/09/02
Trial Date:	None set

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H. The Proposed Decree Is Unfair, Unjust and Infringes Upon The Rights of Third Party Non-Consenting Intervenor Santa Clarita

Although federal courts recognize a strong policy favoring settlement, "our preferences for settlement and accord are insufficient to justify the imposition of a decree that infringes upon the rights of third parties." *Latin American Citizens*, 999 F.2d at 846. In "multiparty litigation, two parties may resolve all of the issues that do not affect a third party, ask the court to include only this settlement in a consent decree, and submit to the court for adjudication of the remaining issues, disputed between them and the third party." *City of Miami*, 664 F.2d at 440.

Here, the Proposed Decree infringes upon the rights of the City because it vitiates the City's absolute right to consultation pursuant to CEQA and violates the procedures established to ensure adequate environmental review before a project is approved for implementation (*See* Declarations of Susan O'Carroll and Bill Piazza filed in support of Opposition to Motion to Enter Consent Decree filed concurrently herewith.) It is the law of the case that the City has a "right of consultation" that is "granted and guaranteed by statute" and "outlined by CEQA." *CEMEX, Inc. v. County of Los Angeles*, 2004 WL 363354 at * 2.

The City's claims are valid. The fact that CEQA was intentionally circumvented to obtain a settlement favorable to the Parties, and the rational used to achieve this unfair result,

is not only illegal and improper, it also unfairly and unjustly infringes on the rights of the general public who have a legal right to participate in the process. What is most alarming in this matter is that the voice of the residents and property owners of the City - the individuals who will be experiencing the harmful impacts of this massive Project - have been stifled, as these individuals have been prohibited from participating in the CEQA process, which process is designed to protect the very environment in which they reside.

IV. CONCLUSION

For the reasons stated above, Defendant-in-Intervention City of Santa Clarita respectfully requests that the Motion to Enter the Consent Decree be denied.

DATED: April 2, 2004

RESPECTFULLY SUBMITTED,

BURKE, WILLIAMS & SORENSEN, LLP

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APPENDIX J

EXCERPTS FROM PAGES 2-3
EXHIBIT A [Pages 4, 8, 9 and 13-15] and
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Appeals Case No. 04-56050
UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

CEMEX INC., a Louisiana Corporation,
Plaintiff-Appellee
and
UNITED STATES OF AMERICA,
Plaintiff-in-Intervention
v.
LOS ANGELES COUNTY,
Defendant,
and
CITY OF SANTA CLARITA,
Defendant-in-Intervention/Appellant

On Appeal From the United States District Court for the Central District of California, Los Angeles District Court Case No. CV-02-00747-DT

APPELLANT'S REQUEST FOR JUDICIAL NOTICE
[Federal Rules of Evidence, Rule 201]

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Pursuant to Federal Rules of Evidence, Rule 201, the Court of Appeals shall take judicial notice of adjudicative facts if requested by a party and supplied with necessary information. Federal Rules of Evidence, Rule 20(a), (b) and (d). Judicial notice may be taken at any stage of the proceeding, including on appeal. Federal Rules of Evidence, Rule 201 (f); *Government of Canal Zone v. Burjan*, 596 F.2d 690 (5th Cir. 1979). The Court may also take judicial notice of court files and records. *Schweitzer v. Scott*, 469 F. Supp. 1017 (C.D. Cal. 1979). Based on these authorities, Appellant City of Santa Clarita ("City") asks this Court to take judicial notice of the following:

1. The district court's files and records in *City of Santa Clarita v. Los Angeles County Board of Supervisors*, (CV 04-7355). Attached as Exhibit A to this Request for Judicial Notice is CEMEX's "Memorandum of Points and Authorities in Support of Motion for Stay of Action Pending Appeal," and attached as Exhibit B is the district court's "Order **Denying** Plaintiff City of Santa Clarita's Motion to Remand Removed Action to the Superior Court of the State of California for the County of Los Angeles; and **Granting** Real Party-In-Interest CEMEX, Inc.'s (as joined by defendants Los Angeles County Board of Supervisors and County of Los Angeles and Real-Party-In-Interest the United States Department of Interior) Motion for Stay of Action Pending Appeal." (emphasis original) Both Exhibit A and Exhibit B are part of the district court's file in *City of Santa Clarita v. Los Angeles County Board of Supervisors*. These documents are relevant because they demonstrate that Appellees are attempting to use the Consent Decree at issue in this appeal to bind non-parties to the Decree and prevent substantive judicial review of the Final Environmental Impact Report's CEQA compliance and legal adequacy. The Motion for Stay and the Order granting that motion were not included in the Excerpts of Record filed

with Appellant's Opening Brief because both those documents were generated after the City filed its Opening Brief.

* * * * *

EXCERPTS FROM EXHIBIT A
[Pages 4, 8, 9 and 13-15]

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CEMEX, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CITY OF SANTA CLARITA,
Petitioner/Plaintiff,

vs.

LOS ANGELES COUNTY BOARD OF SUPERVISORS; COUNTY OF LOS ANGELES, and DOES 1 through 10, inclusive,
Respondents/Defendants.

CEMEX, INC., a Louisiana Corporation; UNITED STATES DEPARTMENT OF INTERIOR; and ROES 1 through 10, inclusive,
Real Parties in Interest.

CASE NOS. CV 04-7355 DT (FMOx)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR STAY OF ACTION PENDING APPEAL

DATE: November 15, 2004
TIME: 10:00 a.m.
CTRM: 880

Real party in interest CEMEX, Inc. ("CEMEX") hereby files this Memorandum of Points and Authorities in Support of the Notice of Motion and Motion for Stay of Proceedings Pending Appeal, filed concurrently herewith.

* * * * *

EXCERPTS FROM EXHIBIT A
[Pages 8 and 9]

I. INTRODUCTION

On July 30, 2004, petitioner/plaintiff City of Santa Clarita (the "City") filed this action in the Superior Court of the State of California, County of Los Angeles, Central District, entitled *City of Santa Clarity v. Los Angeles County Board of Supervisors: County of Los Angeles*, Case No. BS 091566 (the "CEQA action").[1] The CEQA action, however, is little more than an attempt by the City to re-litigate in state court challenges it made to a Consent Decree approved and entered

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[1] A true and correct copy of the City's Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") is filed concurrently with the Appendices of Exhibits as Exhibit 1.

by the District Court on May 5, 2004 (the "Order"[2]) in *CEMEX v. County of Los Angeles*, Case No. CV-02-747 DT (FMOx) (the "CEMEX action").

On June 3, 2004, the City appealed the Order to the Ninth Circuit Court of Appeals. Thus, this Court's determinations in the CEMEX action, as embodied in the Order and the Consent Decree, are now before the Ninth Circuit. In essence, the CEQA action involves many of the same claims, litigated between the same parties, that are presently on appeal from the CEMEX action to the Ninth Circuit.

On September 3, 2004, respondents/defendants Los Angeles County Board of Supervisors and County of Los Angeles (collectively the "County") and real party in interest United States Department of Interior ("United States") removed the CEQA action to this Court. Because many of the current claims in the CEQA action repeat or mirror claims addressed in the CEMEX action by the Order, these claims should be stayed pending resolution of the appeal of the CEMEX action to the Ninth Circuit to avoid, among other things, duplicative and wasteful litigation.

This Court has the authority under its inherent discretion, as well as the All Writs Act, 28 U.S.C. § 1641 ("AWA"), to issue those orders necessary to protect and give effect to its judgments. In this context, a stay order is appropriate in order to not only give effect to the Order, but also to avoid potentially conflicting adjudications arising from the CEQA action while the City's appeal of the same claims to the Ninth Circuit in the CEMEX action is ongoing. Otherwise, not only

---

[2] A true and correct copy of the Order, and the Consent Decree, are filed concurrently with the Appendices of Exhibits as Exhibits 3 and 4, respectively.

would the parties suffer significant additional expenses litigating the same claims in two forums, and the Court would be burdened with another, possibly unnecessary, action, but any determinations in the CEQA action could ultimately be void or otherwise rendered meaningless based on the outcome of the Ninth Circuit appeal. Accordingly, the County respectfully requests that the Court stay the CEQA action pending the outcome of the Ninth Circuit appeal in the CEMEX action.

* * * * *

EXCERPTS FROM EXHIBIT A
[Pages 13, 14 and 15]

B. The Relief Requested By The City In The CEQA Action Would Directly Interfere With The Injunctive Relief Ordered By This Court In The Consent Decree

Stated simply, the CEQA action is little more than a disguised attempt to relitigate the City's opposition to the Consent Decree in the CEMEX action.[3] This fact is best evidenced by comparing the injunctive relief set forth in the Order and Consent Decree with the relief requested in the City's Petition in the CEQA action.

The Order and Consent Decree command the following: (1) the County is enjoined from taking any actions conflicting with the provisions, terms, requirements, and obligations set

---

[3] A true and correct copy of the City's Opposition to Memoranda in Support of Motion to Enter Consent Decree filed on April 2, 2004 ("Opposition") is filed concurrently with the Appendices of Exhibits as Exhibit 2.

forth in this Consent Decree; (2) the County is enjoined from further delaying, frustrating or otherwise interfering with the implementation of the Project as approved by the Bureau of Land Management ("BLM"), including through delays in approving the Project; (3) the County is ordered to complete the environmental review process pursuant to CEQA and as mandated in this Consent Decree within sixty (60) days from the date of entry of this Consent Decree; (4) the County is enjoined from conducting further environmental review for the County-Approved Project prior to issuance of its approval; (5) the County is ordered to issue Project Findings, a Surface Mining Permit, and Reclamation Plan in accordance with the forms of these documents attached to the Consent Decree with in sixty (60) days from the date of entry of the Consent Decree; (6) the County is enjoined from taking any actions that interfere with, conflict with, or otherwise frustrate or impair the terms of this Consent Decree, and will take no action to contradict the findings or determinations therein; (7) the County is further enjoined from taking any actions which seek to impair the implementation of this Consent Decree, or that interfere with CEMEX's or the United States' interests relating to the Project or the Project Site; and (8) the County is enjoined from taking any actions which affect the rights or interests of CEMEX or the United States relating to the Project or Project Site, before any other body, agency or official. (*See* Consent Decree, pp. 60:8-61:9)

The City's prayer for relief in the CEQA action seeks the following relief, all in direct conflict with the Consent Decree: (1) issuance of a preemptory writ of mandate ordering the County to set aside certification of the EIR and ancillary documents; (2) issuance of a TRO or preliminary injunction restraining the County from taking further action to implement or proceed with the Project; (3) a determination that the County violated CEQA and that the County's approvals

relating to the Project are void; (4) a determination that the FEIR is inadequate and that a new EIR must be prepared; (5) issuance of a preliminary injunction enjoining the County, the United States and CEMEX from taking further action to proceed with the Project. (*See* Petition, p. 51:1-18)

The relief requested by the City in the Petition thus challenges the County's actions that were undertaken based on: (1) the County's independent review and analysis of the FEIR and administrative record, which includes the County's analysis of the claims for and against the Project and FEIR made by all commenting parties, including CEMEX's and the United States' claims that federal law preempted the County from further environmental review; and (2) the stipulations in the Consent Decree and the determination by the District Court in the CEMEX Action. The Consent Decree sets forth the parameters of permissible County action based on the parties' and the Court's conclusion regarding the effect of federal laws and decisions on County authority, and thus the applicability of preemption principles was adjudicated in the CEMEX Action. The City's purported state law claims are little more than disguised challenges to the preemption issue that was resolved in the Consent Decree and pursuant to which the County conducted its actions now at issue, namely, the extent to which the County had further authority or discretion to conduct environmental review for the Project.

* * * * *

EXCERPTS FROM EXHIBIT B
[Pages 24, 37, 38, and 40-49]
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTERED
CLERK, U.S. DISTRICT COURT
NOV 18 2004
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
NOV 15 2004
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

Priority √
Send √
Enter √
Closed
JS-5/JS-6 √
JS-2/JS-3
Scan Only

CITY OF SANTA CLARITA,
Petitioner/Plaintiff,
vs.
LOS ANGELES COUNTY BOARD OF SUPERVISORS; COUNTY OF LOS ANGELES, and DOES 1 through 10, inclusive,
Respondents/Defendants.

CEMEX, INC., a Louisiana Corporation; UNITED STATES DEPARTMENT OF INTERIOR; and ROES 1 through 10, inclusive,
Real Parties in Interest.

CASE NOS. CV 04-7355 DT (FMOx)

ORDER **DENYING** PLAINTIFF CITY OF SANTA CLARITA'S MOTION TO REMAND REMOVED ACTION TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES; AND **GRANTING** REAL PARTY-IN-INTEREST CEMEX, INC.'S (AS JOINED BY DEFENDANTS LOS ANGELES COUNTY BOARD OF SUPERVISORS AND COUNTY OF LOS ANGELES AND REAL PARTY-IN-INTEREST THE UNITED STATES DEPARTMENT OF INTERIOR) MOTION FOR STAY OF ACTION PENDING APPEAL

* * * * *

[Exhibit B; Pages 37, 38]

B. Analysis

Cemex seeks a stay of this action pending the outcome of the Ninth Circuit appeal in *Cemex v. County of Los Angeles*, Case No. CV 02-747 DT (FMOx) ("Cemex Action").[6] It argues that this current action ("CEQA Action") involves many of the same claims litigated between the same parties that are presently on appeal in the Cemex Action. Specifically, Cemex claims that (1) the relief requested by the City in the CEQA Action would directly interfere with the injunctive relief ordered by this Court in the Consent Decree and (2) the CEQA Action predominantly raises issues already addressed by the Judgment entering the Consent Decree.

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[6] City appealed this Court's Order Granting Motion for Entry of Consent Decree on June 3, 2004.

In Opposition, City argues that the Consent Decree is no bar to proceeding with this action. It claims that in the Appeal, its right of consultation under CEQA is at stake, and that here, it challenges the adequacy of the County's environmental review from its inception to date. It states that in this action, the substantive merits of the County's FEIR certification and Project approval are squarely at issue, and that the challenged County actions occurred approximately 60 days after the entry of the Consent Decree.

Applying the Standard, supra, this Court finds that a stay of this CEQA Action is warranted.

* * * * *

[Exhibit B: Pages 40-49]

2. The orderly course of justice measured in terms of whether the stay would simplify or complicate issues, proof and questions of law weighs in favor of a stay.

Another factor is "the orderly course of justice measured in terms of whether the stay would simplify or complicate issues, proof, and questions of law." *CMAX, Inc.*, 300 F.2d at 268. This Court finds that a stay would simplify issues, proof and questions of law. As Cemex asserts, the relief requested by the City in the CEQA Action would directly interfere with the injunctive relief ordered by this Court in the Consent Decree, and the CEQA Action predominantly raises issues already addressed by the Judgment entering the Consent Decree.

a. Conflict regarding Injunctive relief

Comparing the injunctive relief set forth in the Order and

Consent Decree with the relief requested by City in this CEQA Action, it is evident that City is attempting substantially to relitigate its Opposition to the Consent Decree in the Cemex Action.

The Order and Consent Decree mandate the following:

1. The County is enjoined from taking any actions conflicting with the provisions set forth in this Consent Decree, and is enjoined to comply with all provisions, terms, requirements and obligations set forth in this Consent Decree;

2. The County is enjoined from further delaying, frustrating or otherwise interfering with the implementation of the Project as approved by the Bureau of Land Management ("BLM"), including through delays in approving the Project;

3. The County is ordered to complete the environmental review process pursuant to CEQA and as mandated in this Consent Decree within sixty (60) days from the date of entry of this Consent Decree;

4. The County is enjoined from conducting further environmental review for the County-Approved Project prior to issuance of its approval;

5. The County is ordered to issue Project Findings, a Surface Mining Permit, and Reclamation Plan in accordance with the forms of these documents attached to the Consent Decree within sixty (60) days from the date of entry of the Consent Decree;

6. The County is enjoined from taking any actions that

interfere with, conflict with, or otherwise frustrate or impair the terms of this Consent Decree, and will take no action to contradict the findings or determinations therein;

7. The County is further enjoined from taking any actions which seek to impair the implementation of this Consent Decree, or that interfere with Cemex's or the United States' interests relating to the Project or the Project Site; and

8. The County is enjoined from taking any actions which affect the rights or interests of Cemex or the United States relating to the Project or Project Site, before any other body, agency or official.

(Consent Decree, pp. 60-61.)

In this action, City seeks the following relief, all of which conflicts with the Consent Decree:

1. issuance of a peremptory writ of mandate ordering the County to set aside certification of the EIR and ancillary documents;

2. issuance of a TRO or preliminary injunction restraining the County from taking further action to implement or proceed with the Project;

3. a determination that the County violated CEQA and that the County's approvals relating to the Project are void;

4. a determination that the FEIR is inadequate and that a new EIR must be prepared;

5. issuance of a preliminary injunction enjoining the County, the USDOI and Cemex from taking further action to proceed with the Project.

(Petition, p. 51.)

The Consent Decree sets forth the parameters of permissible County action based on determinations regarding the effect of federal laws and decisions on County authority. As such, the applicability of preemption principles was adjudicated in the Cemex Action, and here, City is attempting to challenge the preemption issue by asserting state law claims. City is also attempting to challenge the very actions of the County – conducting environmental review for the Project – which were authorized by the Consent Decree.

In its Opposition, City does not dispute that its requested relief directly contradicts the Consent Decree's injunctive provisions. Instead, it argues that "if this court directs the County to de-certify the FEIR and revoke the Permit, then the County is obligated to do so and would not be violating the injunctive provisions." In other words, if the County is subsequently ordered to take other action, it must do it. By making this argument, City misses the point. It cannot be disputed that once a purported conflict is resolved and action is ordered, the parties are bound to comply. However, at issue here is *when* the appropriate time for such resolution should occur. This Court opines that the appropriate time is after similar issues are resolved on appeal and not simultaneously. Indeed, a main purpose of this stay is to avoid conflicting or inconsistent determinations or orders. Again, City does not deny that this risk exists. Furthermore, even if this risk was not present, then at a minimum, the appeal may narrow and/or moot the issues, as explained below.

b. Similar issues in the CEQA and Cemex actions

This Court finds that similar issues exist between the Cemex action and the CEQA action which counsel in favor of stay. More specifically, in this action, City asserts claims which were addressed in the Cemex Action when City made challenges to the Consent Decree.

(1) further CEQA review

City presently claims that the County has failed to exercise independent judgment due to the Consent Decree. It states that the County has "provided no CEQA-based rationale for repudiating the prior Findings" for the Project and that the County has "deferr[ed] all independent judgment to a third party in clear violation of CEQA." (Petition, p. 30.) It further claims that "despite no favorable changes to the actual environmental conditions at the project, [the County has] capitulated to the concept of preemption . . . ." (*Id.* at 31)

Similarly, in its Opposition to the Consent Decree in the Cemex Action, City argued that the Consent Decree impermissibly asked the Court to determine that further County environmental review would be preempted. (Opposition, pp. 18-19.) However, this Court addressed these issues in its Order: "[t]he City's main concern is that the Consent Decree does not allow for full compliance. Thus, perhaps in an effort to obscure the fact that the County review process does in fact comply with state law, the City contends that this Court does not have the authority to approve the Proposed Consent Decree absent an express finding that any application of CEQA to the Project is preempted." (Order, p. 20.) It then determined that based on "the Administrative Record before the Court and the long history of environmental

analysis conducted on this Project, it is this Court's finding that the Consent Decree sets forth a Project that complies with all substantive requirements of CEQA, fully identifies significant environmental effects and feasible mitigations, and which, in fact, provides additional environmental and other benefits to the County as a whole and the City in particular." (*Id.*) Finally, this Court found that further environmental review was preempted: "this Court independently finds on the basis of the record before it, that only further County review is preempted, because the Consent Decree and its related documents satisfy the requirements of state law, including both CEQA and . . . [SMARA]." (*Id.* at 21.) Thus, City's current claims that the Project fails to satisfy CEQA's requirements is an issue encompassed by the Court's Order.

(2) "retroactive conduct" provisions

City claims that "retroactive conduct" provisions in the Consent Decree "intimidate" the County and prevent the County from carrying out its purported obligations under state law due to "threats" and coercion from Cemex. Again, this Court finds that these are claims that this Court addressed in its prior Order, concluding that "contrary to the unsubstantiated allegations of the City, the Consent Decree did not arise as a result of 'duress' and 'coercion.'" (Order, p. 14.) After a lengthy discussion, this Court concluded that the purported "retroactive conduct" provision in the Consent Decree in no way interfered with the County's ability to carry out its functions in relation to the Project. (*Id.* at 14-18.)

(3) claims regarding the supplemental biological opinion

City's Petition challenges that the Supplemental Biological Opinion ("SBO") prepared by the U.S. Fish and Wildlife

Service for the Project in 2001 to address potential impacts on the arroyo toad, a federally-listed endangered species, "does nothing to preserve the Arroyo Toad species." (Petition, p. 32.) It claims that various provisions in the SBO, identified to minimize impacts to the arroyo toad, actually create greater impacts to the arroyo toad and thus "eviscerates" the County's ability to enforce mitigation measures for the Project in violation of CEQA. (*Id.* at ¶¶ 67, 69, 77-73, 77, 78.) In its Opposition in the Cemex Action, City raised nearly identical claims, arguing that recirculation under Section 15088.5 of the CEQA Guidelines was triggered due to the mitigation measures identified in the SBO.[7] (Opposition, pp. 26-29.) In the Order, this Court addressed these claims, concluding that they were "without merit and lacking of evidence." (Order, p. 26.) Specifically, this Court concluded that "this Court finds that the Project remains as previously analyzed and has not significantly changed in a way relevant to environmental concerns. Since the City's challenge to the Consent Decree is based on alleged project changes in without merit, no . . . recirculation of the EIR is required." (*Id.* at 27.)

(4) claims regarding an alleged "project acceleration" condition

As it did in opposing the Consent Decree, City claims that an alleged "project acceleration" condition "allows for a stepped increase in mining production" and a "drastic acceleration in the sale of marketable material" purportedly shortening "the twenty year term of the Project by nine years." (Petition, pp. 37-38.) This language is identical to the language used by City in its Opposition to the Consent Decree. This Court dismissed the City's "project

---

[7] As noted by the County, paragraph 67 of the Petition contains language identical to a portion of the City's prior Opposition.

acceleration" theory, concluding that, in fact, the condition was nothing more than a cap on the amount of yearly production that Cemex might carry out. (Order, pp. 27-28.)

(5) claims regarding purported undisclosed cancer risks

City alleges that there are "undisclosed cancer risks" for the Project. (Petition, ¶¶ 86-94.) Again, City repeats this claim from its Opposition, and again this Court already addressed the claims. This Court concluded that "the County has carefully and conscientiously examined any comment letters which purport to raise significant new information, and made specific and extensive findings that no new information has been raised." (Order, p. 30.) As such, this Court concluded that City's claims regarding "undisclosed cancer risks" did not raise any significant new information affecting the environmental conclusions for the Project. (*Id.* at 31.)

(6) claims regarding air and water permits

City alleges that Cemex must obtain air and water permits from various state agencies, and that the Record of Decision for the Project purportedly requires that Cemex obtain various permits. (Petition, ¶¶ 95-100.) It alleges that these permits may not be obtained until "all of the information needed for an accurate assessment of air and water quality impacts has been gathered and analyzed." (*Id.* at p. 43.) Not surprisingly, City had argued in its Opposition that the "CEQA process . . . may not be concluded until all of the information needed for an accurate assessment of air quality impacts has been gathered and analyzed." (Opposition, p. 44.) As this Court stated previously, "nothing in the Decree purports to affect any CEQA processes that may be ancillary to Federal Clean Air

Act or Federal Clean Water Act permits that Cemex needs to operate the project. Thus, nothing in the Consent Decree restrains the AQMD or the State Water Resources Control Board from conducting such CEQA procedures as may be required by law." (Order, p. 33.)

(7) other claims

The County also points out that a number of other claims raised by the City were also raised in its Opposition to the Consent Decree and resolved by this Court:

1. City claimed that the current conclusions in the Consent Decree regarding traffic methodologies are improper; this is an issue raised here (*see* Opposition, p. 38; Petition, ¶ 101);

2. City claimed in its Opposition that it "has an absolute right to be consulted [by the County] on this Project under CEQA" (Opposition, p. 24) and now claims that "certification of the EIR was done in disregard for the rights of the City because it vitiates the City's absolute right to consultation pursuant to CEQA . . ." (Petition, ¶ 109);

3. City's claims regarding alleged procedural improprieties in the County's Findings raised in its Opposition (*see*, e.g., Opposition, pp. 37-40) are mirrored in City's Seventh Claim for Relief, alleging County failure to make necessary Findings. (Petition, ¶¶ 116-120.)

Thus, in view of the above conflict between the injunctive relief of the Order and Consent Decree and the relief requested here and the similar issues between the Cemex and CEQA Actions, this Court finds that the orderly course of justice weighs in favor of a stay.

In Opposition, City argues that a decision on the Appeal will not simplify the issues in this action because the issues differ. It claims that its current issues regarding project splitting, inadequacies of the project description, inadequate cumulative effects analysis, failure to re-circulate, and violations of the DMS were not before the Court in the Cemex Action. In making its determination, this Court is by no means finding that all issues in the Cemex and CEQA Actions are identical. Instead, as demonstrated above, this Court finds that a significant overlap of facts and questions of law exists. This overlap is sufficient to satisfy the requisite factor of "whether the stay would simplify . . . issues, proof, and questions of law." The standard is not whether the issues are identical, as City advocates. As stated in the Standard, *supra*, a stay of an action pending resolution of independent proceedings which bear upon the case does not require that the issues in such proceedings are necessarily controlling of the action before the Court. *Mediterranean Enterprises, Inc.*, 708 F.2d at 1465 (quoting *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979)).

Furthermore, City cannot seriously dispute that an affirmance of some issues in the Cemex action could subject the present claims to res judicata and/or collateral estoppel, or at the very least, would narrow the present claims. Moreover, if the Ninth Circuit reverses or overturns the Consent Decree, this CEQA Action essentially becomes moot. For those legal and factual issues not affected by the Appeal, City will have its opportunity to address and litigate them. As such, a stay will not offend "fundamental fairness" which, as City states, "requires that the City have a complete and full opportunity to substantively litigate its state law claims regarding the County's FEIR certification and Project approval." A stay is just that and not a determination on the merits of City's claims. When the stay is lifted, City will have its opportunity

to present all remaining claims of its case.

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